BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 13-05

AMENDMENTS TO REGULATIONS GOVERNING OCEAN TRANSPORTATION INTERMEDIARY LICENSING AND FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES

COMMENTS OF PARKERCO, INC. DBA PARKER & COMPANY FMC LICENSE 3015R TO REGULATIONS GOVERNING OCEAN TRANSPORTATION INTERMEDIARY LICENSING AND FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES

The proposed regulations will, if implemented, complicate rather than "streamline" the agency's internal processes. The requirement for license and registration renewal will create thousands of new regulatory filings each year, creating significant burdens for the OTI industry. Moreover, the Commission's own staff, who would presumably be tasked with reviewing, analyzing, and ultimately approving (or rejecting) the license and registration renewals of thousands of forwarders and NVOCCs are hard pressed to keep with existing workloads. There are far less obtrusive methods to ensure that the Commission obtains the information it needs. And, certain of the "streamlining" proposals raise significant due process and confidentiality concerns.

In our view, the proposals in the ANPRM should either not go forward or should be significantly refocused.

I. CHANGES IN DEFINITIONS

Several of the new definitions raise some questions. First, as discussed in greater detail below, it is not clear why it is necessary for the Commission to define the term "advertisement", at least with respect to mainstream operations involving the movement of commercial cargo. (Proposed Section 515.2(a).) Given the specialized nature of the

movement of household goods and personal effects for individual consumers, there may well be a reason to define that term when and if the Commission determines to consider regulations for that specialized trade. On the other hand, Parker & Company, like many of our fellow forwarders in our profession, deal with commercial shippers, whom do not require government supervision over the selection of their service providers. Most of them carefully select their business partners, negotiate their shipping needs with OTIs and VOCCs, obtain cargo insurance and demand (and receive) quality service. As they are not likely to be misled by online advertising by unknown vendors, there does not appear to be a need for the Commission to seek to regulate how commercial cargo service providers advertise their services. Hence, any regulations of this nature should be carefully reviewed and limited solely to those parties that provide (or advertise to provide) for the transportation of household goods for individual consumers.

With respect to the "qualifying individual" ("QI") (new 515.2(q)), the use of the term "general supervision" raises some questions. Does this new definition mean that the Commission intends to hold the QI personally liable for any actions that might contravene the Act? If the Commission intends to impose specific requirements, the agency should at least suggest general guidelines, so the industry can understand what responsibility QIs actually have from an FMC perspective.

II. LICENSE RENEWAL

Parker & Company believes that the ANPRM proposal – license renewals rather than periodic updates – will cause significant problems for the OTI industry and complicate, rather than streamline, the agency's functions.

Proposed Section 515.14(c) provides that OTI licenses would now need to be renewed every two years, a licensee would be required to submit an application to initiate

this process and pay an unspecified application fee for this purpose, but that the license renewal process "is not intended to result in a re-evaluation of a licensee's character . . . ." However, the Commission has provided little explanation or justification for this significant change, one which will affect every ocean forwarder and NVOCC.

For example, the Commission could require that all licensees and foreign registered companies provide annual updates of relevant identifying information; this could be filed electronically, without charge, and without unduly burdening either the OTIs the Commission's staff.

Proposed Section 515.20(c) would require OTIs to report changes, such as the death or retirement of a QI, within 15 business days and to provide a replacement. This is a significant reduction from the existing 30-day period, which in and of itself is often an insufficient period of time to replace a QI when an individual unexpectedly leaves the employ of the company. We believe this period unreasonably short on the death of the individual and does not give ample time since this possibly will not be the only item a company must address with the death of usually an officer of the company we suggests that the existing 30-day period for such notifications and filings be retained, if not lengthened.

III. OTHER PROCEDURAL LICENSING ISSUES

There are several other procedural issues enunciated in the ANPRM that give reason for Parker & Company to be concerned. First, and with respect to the procedure for submitting applications, proposed Section 515.12(c) literally states that an applicant's failure to submit materials responsive to the reviewing official's request "by the

established date will result in the closing of its application without further processing." Taken literally, this seems unduly restrictive.

Second, proposed Section 515.16 has added to the list of items for which a license can be suspended or revoked. New to the list (from existing §515.15) are: (1) the failure to timely renew a license, (2) doing business in any manner with an NVOCC that is not properly licensed, registered, bonded or tariffed, (3) if the Commission somehow deems the licensee "not qualified" to provide service, and (4) "any act, omission or matter that would provide the basis for denial of a license to a new applicant . . . ." Suggesting that the Commission does contemplate terminating licenses in a summary fashion. With respect, we believe that the Commission is overreaching if the purpose of this is to short-circuit a licensee's due process rights.

Insofar as these new items are concerned, it is not always easy to determine whether a particular entity is acting in the capacity of an NVOCC; hence, it is entirely possible that a licensed OTI might in some way be innocently involved in "processing, booking or accepting cargo" from an entity that should be but hasn't been licensed. Or, perhaps the entity was not subject to FMC jurisdiction after all. As the requirement of "*knowingly and willfully*" has been significantly watered down from the original notion that someone must have specifically intended to violate the law to one where the government now need only establish that the respondent should have known, this criterion puts the entire OTI industry at risk for possible suspension and/or revocation of licenses.

The Commission has not articulated the harm with respect to the transportation of commercial cargo that would justify license revocation, rather than the imposition of penalties, in situations where there has been some demonstrable shortcoming on the part

of a licensed OTI. Similarly, the ambiguous grounds for revocation as appear in proposed Section 515.16(8) and (10) (*viz.*, revocation if someone is "not qualified" or where an initial license would have been denied) again raise concerns about the Commission's ability to unduly interfere with a company's existence.

Parker & Company fully supports the goal of establishing a level playing field where all members of the industry, OTIs and VOCCs alike, act properly, ethically, efficiently and competitively. And, where there has been some demonstrable shortcoming, there is already a system in place to impose significant financial penalties, something the Commission has not been reticent to do. Those penalties are normally sufficient to get the message across concerning the need for compliance with the provisions of the Shipping Act. Going further and summarily threatening the survival of a company is an inappropriate extension of the Commission's enforcement weapons.

IV. CHANGES IN OTI BONDS

In proposed Section 515.21, the ANPRM proposes to increase the bonding requirements for the purpose of reflecting inflation and because existing levels "have proven inadequate" to protect parties who might make claims against these bonds. In support of this, ANRPM cites two examples of situations where claims were made against OTIs that significantly exceeded the amount of the bonds. In one case, claims totaling in excess of $636,000 were made, while in the other the claims totaled approximately $550,000. Quite obviously, an increase of the bonds by the proposed $25,000 (from $50,000 to $75,000 for licensed forwarders and from $75,000 to $100,000 for NVOCCs) would be inadequate to deal with claims of that magnitude. Thus, while there may well be merit to increasing bond amounts by some inflationary measure, there is no rationale

to support the approach taken in the ANPRM – namely, that the proposed bond increases would prevent the two situations that are discussed from occurring.

Moreover, even if the issue of the level of bonds was significant – and there is no indication that this is in truth a significant problem[1] – the burden of this proposal falls unevenly and disproportionately on the backs of smaller OTIs such as Parker & Company. For example, and completely aside from the fact that larger OTIs are likely to pay significantly less in premiums on a dollar-for-dollar basis than their significantly smaller competitors, the proposal would eliminate the need for OTIs with branch offices to increase their bond amounts by $10,000 for each office. Consequently, and notwithstanding the proposed increases, the proposal has the effect of actually reducing the bond amounts required by the new rule for any company that has three or more branch offices and places smaller forwarders at an economic disadvantage.

V. AGENCY ISSUES

While Parker & Company recognizes and agrees that the Commission should implement a number of the recommendations from the FF 27 Report pertaining to advertising and agents in household goods industry, there is no need for the Commission to carry those recommendations forward into the mainstream commercial OTI industry. All of the problems and issues that are identified in the FF 27 Report pertain exclusively to the movement of individual household goods and personal effects. While Parker & Company believes that significant consumer oriented regulations should be considered for that traffic, Parker & Company is not aware of any reason for the proposed regulations

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concerning agency agreements and advertising in Section 515.31 to be made applicable to the movement of mainstream commercial cargo.

VI. FF 27 REPORT ISSUES

Parker & Company agrees with most of the FF 27 Report, particularly the section that discusses and stresses the importance of educating individual consumers about the processes and risks involved in the international movement of household goods. This includes the importance of using licensed OTIs, who can properly explain issues relating to shipping and delivery schedules, insurance, methods of communication, estimates, demurrage and exactly which company will actually be providing the service. An educated consumer is the best protection against the types of negligent and outright fraudulent practices with which the Commission has been required to deal and which are well described in the FF 27 Report.

Parker & Company therefore also suggests that the Commission consider promulgating specific consumer protection regulations, comparable to those in 49 C.F.R Part 375, albeit more specifically tailored to international ocean shipping, that provide clear guidance to both the consumer and the OTI, carrier or other third party providing such services, which covers items such as:

- the benefit of using licensed/bonded OTIs,
- the purpose and use of binding and non-binding estimates,
- the need for insurance and the limitations of carrier cargo coverage under COGSA,

- communication between the shipper and service provider, including the establishment of a 24-hour "hot line" so that the shipper has someone to contact if problems do arise,
- the realities of shipping/performance commitments, and
- dispute resolution procedures, including arbitration or referral to the Commission's Consumer Affairs and Dispute Resolution Services ("CADRS") offices.

In addition, the Commission might consider recommending that Congress add enforcement tools akin to the remedies available to FMCSA in 49 U.S.C. §14901(d) that might help the agency better police this facet of the industry. In that regard, FMCSA's statutory enforcement tools includes mandatory minimum penalties of $25,000 for persons providing such services without proper authorization and penalties for falsification of transportation documentation, for failing to comply with the relevant regulations and for providing estimates without having a price agreement from the underlying carrier.

VII. CONCLUSION

Parker & Company appreciates the opportunity to comment on the proposals set forth in the ANPRM. However, we believe the Commission should focus its attention in more closely on the issues discussed in the FF 27 Report rather than imposing new requirements on licensed OTIs that do nothing to facilitate the efficiency and competitiveness of our industry.

Respectfully submitted, Frank Parker, Jr., President/CEO Parkerco, Inc. dba Parker & Company